INDEX

Page

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED 1

COUNTER-STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 16

ARGUMENT:

I. THE SECRETARY MAY NOT LITIGATE UNDER TITLE IV MATTERS WHICH WERE NOT RAISED WITHIN THE UNION 20

II. THE MEETING ATTENDANCE REQUIREMENT IS REASONABLE 34

A. The Steelworkers' Meeting Attendance Rule Is Designed to Accomplish Legitimate Union Purposes 36

B. The Landrum-Griffin Act Was Not Enacted to Strike Down the Steelworkers' Meeting Attendance Rule 39

C. Petitioner's Objections to the Steelworkers' Meeting Attendance Rule Are Without Merit 42

(1) The Percentage Qualifying 42

(2) Credit for Working 44

(3) The 36-Month Period 45

CONCLUSION 46

APPENDIX

Cases in Which Meeting Attendance Rules Have Been Held Unreasonable 47

TABLE OF CITATIONS

Cases

Goldberg *v.* Amarillo General Drivers, 214 F. Supp. 74 (N.D. Tex. 1963) 37

Martin *v* Lodge 636, Boilermakers, 245 F. Supp. 375 (W.D. Pa. 1963) 44

Musicians *v.* Wittstein, 379 U.S. 171 (1964) 41

Norwegian Nitrogen Products Co. *v.* United States, 288 U.S. 294 (1933) 35

Shultz *v.* Local Union, 1150, USWA, 75 LRRM 2869, 64 L.C. Para. 11, 288 (S.D. Ind. 1970) 4, 35

Shultz *v.* Local Union 1299, USWA, 73 LRRM 2673, 62 L.C. Para. 10, 720 (E.D. Mich. 1970) 4, 35

Trailmobile Co. *v.* Whirls, 331 U.S. 40 (1947) 33

United States *v.* American Trucking Assns., 310 U.S. 534 (1940). 35

Vaca *v.* Sipes, 386 U.S. 171 (1966) 38

Wirtz *v.* Glass Bottle Blowers Assn., 389 U.S. 463 (1968) 15-16, 19, 21, 27-29, 32, 39

Page

Wirtz *v.* Hotel Employees, 391 U.S. 492 (1968) 18, 21-22, 27, 31, 38, 40, 43

Wirtz *v.* Hotel, Motel & Club Employees, 381 F. 2d 500 (2d Cir. 1967), reversed 391 U.S. 492 (1968) 34

Wirtz *v.* Independent Workers Union, 272 F. Supp. 31 (M.D. Fla. 1967) 47-49

Wirtz *v.* Laborers' Union, 389 U.S. 477 (1968) ... 16-17, 19-22, 24, 26, 28, 30-32

Wirtz *v.* Local Union No. 9 etc., 366 F. 2d 911 (10th Cir. 1966), vacated as moot, 387 U.S. 96 (1967) 34

Wirtz *v.* Local 66, Glass Bottle Blowers Assn., 268 F. Supp. 33 (W.D. Pa. 1967) 47-48

Wirtz *v.* Local 153, Glass Bottle Blowers Assn., 244 F. Supp. 745 (W.D. Pa. 1965), affirmed 405 F. 2d 176 (3rd Cir. 1968) .. 47-48

Wirtz *v.* Local 174, American Federation of Musicians, 272 F. Supp. 294 (E.D. La. 1967) 34

Wirtz *v.* Local 257, Glass Bottle Blowers Assn., 273 F. Supp. 746 (D.N.J. 1967) 34

Wirtz *v.* Local 262, Glass Bottle Blowers Assn., 290 F. Supp. 965 (N.D. Cal. 1968) 47-48

Wirtz *v.* Local Union No. 406, 254 F. Supp. 963 (E.D. La. 1966) 34-35

Statutes

Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000(e) 33, 38

Labor-Management Relations Act, Section 8(b), 29 U.S.C. § 158(b) 38

Labor Management Reporting and Disclosure Act:

Title II, 29 U.S.C. §§ 431-432 38

Title IV, 29 U.S.C. §§ 481-483:

Section 401, 29 U.S.C. § 481 ..... 3, 7, 10, 14, 27, 34-49

Section 402, 29 U.S.C. § 482 ..... 6, 16-34

Title V, 29 U.S.C. §§ 501-504 38

Title VI, Section 601, 29 U.S.C. § 521 22

Congressional Materials

Cong. Rec. 16489 (Senate) (1959) (Remarks of Sen. Goldwater). 22

105 Cong. Rec. 6741 (April 25, 1959; Remarks of Sen. Morse) ... 39

S. 1002, 86th Cong. 1st Sess., 105 Cong. Rec. 2067 (1959) 32-33

S. 3974, 85th Cong. 2nd Sess. (1958) 32-33

S. Rep. No. 187, 86th Cong. 1st Sess. (1959) 17, 22, 24-25 32, 39

Miscellaneous

The Wall Street Journal, "How Big Teeny Kranz, Local Union President, Battles for His Troops: He Talks Tough, Works Hard on Problems at Steel Mill" (October 24, 1969; page 1).. 38

IN THE

Supreme Court of the United States

October Term, 1970

No. 655

JAMES D. HODGSON, Secretary of Labor,
Petitioner,

v.

LOCAL UNION 6799, UNITED STEELWORKERS OF AMERICA, AFL-CIO, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENTS

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

1. Whether, in a Title IV action under the LMRDA, the Secretary may allege violations which he admits were not raised by any member in the union's internal protest procedure.

2. Whether the union's requirement that a candidate for office have attended half the union's monthly meetings in the 21 months preceding the election is a "reasonable qualification" for candidacy, where the requirement is designed to serve legitimate union interests, attendance is not difficult for any member, and the requirement does not in practice preclude contests for union office.

COUNTER-STATEMENT OF THE CASE

Introduction

United Steelworkers of America, AFL-CIO ("USWA") is an international labor organization with one-and-one-quarter million members. USWA has 3,700 affiliated local unions, one of which is Local 6799 (A. 156). The membership of Local 6799 consists exclusively of the 578 employees of the Pomona, California, plant of H. W. Loud Division, Howmet Corp. (A. 14, 34, 75).

USWA's governing body is the International Convention, which meets every two years. The Convention is comprised of delegates elected by the 3,700 constituent local unions. The Convention adopts the International Constitution, which governs the affairs of the organization between conventions (A. 156). Among the matters regulated in the Constitution is the election of officers of local unions (A. 167).

Until 1962, the Constitution provided that the term of office in each of USWA's locals would be two years. It also provided that, to be eligible to run for local union office, a member must have attended at least one-half of the regular membership meetings conducted by his local during the preceding term of office (i.e. during the preceding 24 months) (A. 156).[1]

At the 1962 Convention, the Constitution was amended to provide that the term of local union offices would be

---

[1] The purposes of the meeting attendance rule are several: to encourage attendance at the membership meetings, where the official business of each local is transacted (A. 38, 117); to provide a check on the incumbent officers' unbridled control of union affairs, by assuring that those who disagree with the incumbents' policies (and who wish to oppose them in the next election) will attend union meetings (A. 147-148); to assure that those who attain union office are conversant with the nature of the union's affairs and are prepared to assume the responsibility of union management (A. 38, 94); and to assure that those who acquire union office have a demonstrated interest in union affairs (A. 38, 117).

three years, rather than two.[2] No change was made in the meeting attendance requirement (A. 156).

At the 1964 Convention, rank-and-file delegates proposed that the Constitution be amended to expand the meeting attendance requirement to thirty-six months, so that it would be coterminous with the new three-year term of office. Although USWA's officers opposed the change, and urged that it not be made, a majority of the delegates voted to make the change (A. 156-157).

The Secretary of Labor was less enthusiastic than USWA's membership about the new meeting attendance rule (A. 93-94). When the first series of USWA local union elections were conducted under the new rule (all 3,700 USWA locals conducted elections in 1967) the Secretary resolved to challenge the rule as violative of the LMRDA. Accordingly when members filed complaints with the Secretary about other aspects of their local union elections, the Secretary seized upon these as a vehicle for attacking the meeting attendance rule. He instituted eight lawsuits—one of them the instant case—challenging matters which *had* been raised by members in their internal union protests, and in each of these lawsuits he appended a challenge to USWA's meeting attendance rule.[3]

Three of these lawsuits have now been tried and decided.[4] In each, the district court held that USWA's meet-

---

[2] This was consistent with Section 401(b) of the LMRDA, 29 U.S.C. § 482(b), which requires that locals elect officers "not less than once every three years."

[3] In addition to the instant case, and those cited in footnotes 4 and 5, *infra*, the Secretary instituted the following actions: *Wirtz* v. *Local Union 2173, USWA*, Civ. Ac. No. 68-76 (S.D. Ohio); *Wirtz* v. *Local Union 5724, USWA*, Civ. Ac. No. 68-30 (S.D. Ohio); *Wirtz* v. *Local Union 1219, USWA*, Civ. Ac. No. 68-1425 (W.D. Pa.); *Wirtz* v. *Local Union 1578, USWA*, Civ. Ac. No. 68-1421 (W.D. Pa.). These four actions are pending and have not been tried.

[4] One case became moot, and was withdrawn, because the local was merged into another local. *Wirtz* v. *Local Union 1798, USWA*, Civ. Ac. No. C-48751 (N.D. Cal.).

ing attendance rule is a "reasonable" rule which does not violate the LMRDA. One is the instant case (A. 38, 46); the others are *Shultz* v. *Local Union 1150, USWA*, 75 LRRM 2869, 64 L.C. Para. 11, 288 (S.D. Ind. 1970), and *Shultz* v. *Local Union 1299, USWA*, 73 LRRM 2673, 62 L.C. Para. 10, 720 (E.D. Mich. 1970). The Secretary appealed all three decisions. In the instant case, the Court of Appeals for the Ninth Circuit held that the Secretary was not entitled to challenge the meeting attendance rule, because the matter had not been raised in the internal union protest proceedings (A. 50-54). Accordingly, the Court of Appeals did not pass upon the correctness of the district court's holding that the meeting attendance rule is reasonable (A. 54, n. 7). The other two appeals are pending in the Sixth and Seventh Circuits, and are being held in abeyance pending this Court's resolution of the instant case.[5]

Meanwhile, three more years have passed, and USWA's 3,700 local unions have held another round of elections. Once again, the Secretary, seizing upon members' complaints about *other* aspects of their locals' elections, has instituted a series of lawsuits in which the meeting attendance requirement is being challenged.[6]

The only issue which this Court *must* decide in the instant case is whether the Secretary is entitled to challenge matters which were not complained of by members in the internal union proceedings. But should this Court decide that issue favorably to the Secretary, we join in the Secre-

---

[5] *Hodgson* v. *Local Union 1150, USWA*, Misc. Record No. 996 (7th Cir.); *Hodgson* v. *Local Union 1299, USWA*, No. ..... (6th Cir.).

[6] *Hodgson* v. *Local Union 2609, USWA*, Civ. Act. No. 70-1445-K (D. Md.); *Hodgson* v. *Local Union 1014, USWA*, Civ. Ac. No. 70-H-297 (N.D. Ind.); *Hodgson* v. *Local Union 3911, USWA*, Civ. Ac. No. 71-C-74 (N.D. Ill.); *Hodgson* v. *Local Union 3489, USWA*, Civ. Ac. No. 70-C-117 (S.D. Ind.); *Hodgson* v. *Local Union 4580, USWA*, Civ. Ac. No. 1583-70 (D. N.J.); *Hodgson* v. *Local Union 6014, USWA*, Civ. Ac. No. 70-3483 (E.D. Pa.); *Hodgson* v. *Local Union 6214, USWA*, Civ. Ac. No. 70-28-F (N.D. W.Va.).

tary's request that this Court reach and decide the reasonableness of the meeting attendance rule, for otherwise the parties will be compelled to continue their litigation of this issue in the 14 cases now pending in the lower courts.

The Election at Local 6799

This case arises out of the 1967 election of officers at Local 6799. In accordance with standard USWA procedure, a nominating meeting was held at which any member of Local 6799 could nominate any other member as a candidate for local union office (A. 131). All told, 49 persons were nominated for the 11 offices, but 22 declined to run (A. 18). This left 27 candidates who were nominated and who wished to run.

At the nominating meeting, an Election Committee was selected. One of the Committee's duties was to determine whether those nominated and desirous of running satisfied USWA's meeting attendance requirement (A. 39). Because Local 6799 had been in existence for only 21 months, and had held one membership meeting each month, a nominee would be eligible if he had attended 11 of the 21 meetings (or was excused from attending because working or conducting union business when the meeting was held) (A. 16, 24, 37-38).

The Election Committee found that, of the 27 candidates, all but four satisfied the meeting attendance requirement. These four were given written notice that they had been found ineligible, and were invited to notify the Committee within 10 days if they believed the Committee had erred in ruling them ineligible. None of the four challenged the Committee's determination, and accordingly the election was conducted with the 23 candidates who had been found eligible. There were three candidates on the ballot for President, four for Vice-President, three for Treasurer, two each for Recording Secretary, Financial Secretary, Guide,

Inside Guard and Outside Guard, and three for the three Trustee positions (A. 41-43).

The Election Protest

Following the election, one of the defeated candidates for President, Nicholas Hantzis, filed an internal union protest challenging the conduct of Local 6799's election (A. 168-175). Hantzis' protest did not challenge the reasonableness of the meeting attendance rule (indeed, Hantzis had qualified under the rule). The Secretary has conceded that Hantzis' protest neither afforded the union fair notice that the meeting attendance rule was being challenged as invalid nor called upon the union to correct any such invalidity (A. 12).

USWA's International Executive Board—the body mandated by USWA's Constitution to resolve election protests—conducted hearings on the matters which were raised by Hantzis' protest and concluded that they did not warrant any remedial action (A. 176-182). (All told, USWA's Board decided 94 election appeals during the period 1964-1967, and ordered remedial action in 51. Hantzis' appeal was one of the minority in which no remedial action was ordered).

Hantzis thereupon filed a complaint with the Secretary of Labor pursuant to Section 402(a) of the LMRDA (A. 183-187). That complaint advanced a number of claims which had not been raised in the internal union protest, including a claim that the existence of the meeting attendance requirement had not been adequately communicated to Local 6799's membership (A. 184).[7]

---

[7] Petitioner's brief (page 3) incorrectly states that Hantzis' complaint to the Secretary "added a specific charge that an unreasonably restrictive meeting attendance requirement had been imposed as a condition of candidacy in the election." A fairer reading of Hantzis' complaint (A. 184) is that he was protesting the lack of communication of the rule, not the reasonableness of the rule itself. Indeed, in a pre-trial interview Hantzis advised the union's counsel that he believed

The Secretary investigated Hantzis' complaint, and concluded that one of the issues which he had raised within the union was valid: that one of his opponents for the office of President had requested and obtained permission to run off campaign leaflets on a union mimeograph machine (at a cost to the union of $13.04) and the union did not advise other candidates that they would be accorded the same opportunity. The Secretary's representative notified the union that the Secretary considered this to constitute an expenditure of union funds to promote candidacy, violative of Section 401(g) of the LMRDA, 29 U.S.C. § 481(g) (A. 189). Additionally, the Secretary's representative notified the union that the Secretary considered the meeting attendance requirement to be an "unreasonable" eligibility requirement, violative of Section 401(e) of the Act (A. 189). The Union requested and obtained two meetings with the Secretary's representatives in which it sought to dissuade the Secretary from instituting suit (A. 92-95, 98-102, 105, 116-117). These efforts failed, and the Secretary instituted the present action.

Proceedings in the District Court

The complaint alleged that Section 401(g) had been violated by the mimeographing of a candidate's leaflet, and that Section 401(e) had been violated by the use of the meeting attendance requirement (A. 3-6).[8]

---

the rule reasonable; but when union counsel sought to elicit this view from Hantzis at trial, the court sustained an objection from Government counsel that "I don't think that one man's opinion on this is particularly relevant" (A. 86-87). With respect to Hantzis' claim that the rule had been inadequately communicated, the evidence was overwhelmingly to the contrary (A. 71-72, 74-76, 81, 132, 154-155, 160-162) and the district court found adequate communication (A. 35).

[8] In addition, the complaint alleged that the meeting attendance rule had been applied in a non-uniform fashion (A. 5). At trial, it developed that the Election Committee had made two inadvertent arithmetical errors. One candidate, Poynter, was permitted on the ballot

At trial, the facts relating to the meeting attendance requirement were proved as follows: The local held one meeting each month, lasting approximately two hours (A. 16, 132).[9] The meeting was held in a hall located fifteen minutes from the plant (A. 18). Any member who was working at the time the meeting was scheduled to begin was given credit as though he had attended (A. 16, 129-130). The Secretary conceded that there were no circumstances making it difficult for any member to attend, and that he had not found a single member who claimed that attendance constituted a hardship of any kind (A. 114-115).

The monthly meeting is the place where the official business of the local is transacted, and where the decisions are made (by vote of those attending) on all important union matters. At a typical meeting, the Recording Secretary reads all communications received by the local during the preceding month (A. 81); the Treasurer and Financial Secretary report on all financial affairs, and each proposed disbursement is voted upon by the members present (the local's cash flow is approximately $1,600 per month, and

---

although he had attended insufficient meetings. As he lost, his inclusion did not affect the outcome (A. 20, 23, 41). Another candidate, Ross, was found ineligible, although he had sufficient work credits (A. 40). Ross knew that the Election Committee had erred, but he refused the Committee's invitation that errors be brought to its attention because "I didn't really want the office, anyhow" (A. 160). The district court concluded that the Ross exclusion did not warrant relief because the mistake was "honest" and "unintentional" and "because Mr. Ross failed to contest his disqualification prior to the election" (A. 46). The Court of Appeals did not decide this issue, because it ruled that the Secretary was not entitled to litigate it (A. 52-54). The Secretary has not raised this issue in his "Questions Presented," and we therefore do not discuss it herein.

[9] Actually, the meeting was split into two parts: one for the day shift workers and the other for the evening, or "swing shift" workers (A. 16). It was considered a single meeting with the two groups attending at different sessions, and attendance at either session was sufficient for credit under the meeting attendance rule (A. 73).

quite often there are debates about expenditures) (A. 84); a staff representative employed by USWA reports on those national union affairs which he believes the members should know about (A. 85); the chairman of the local's Grievance Committee reports on the status of each pending grievance alleging that the employer is violating the collective bargaining agreement (A. 85); reports of the Workmen's Compensation Committee, Welfare Committee, Safety Committee, and Finance Committee are presented, debated and resolved (A. 86); and in the "unfinished business" and "new business" sections of the meeting all other matters of importance to the union are debated and resolved by membership vote (A. 86). The local's incumbent president repeatedly advised the members that if they didn't like the way the union's affairs were conducted "come out and attend meetings so that you can go ahead and have a say in it and you'll be able to run for office and change it" (A. 154-155).

Of Local 6799's 578 members, 36 (including nine incumbent officers) actually attended eleven of the 21 monthly meetings (A. 38). The additional number who were eligible by reason of meetings attended plus meetings-credited-because-working was never proved. The Election Committee had checked the work records only for those who were nominated (A. 39). Of the ten nominees who had not attended 11 meetings, six became eligible when work credits were added.[10] All told, 23 of the 27 persons nominated were eligible (A. 18).

Although the trial court intimated that it was the Secretary's burden to show the percentage of the total membership which did not meet the rule, if the Secretary intended to rely upon low percentage (A. 149), and the Secretary acknowledged that he had no evidence as to the per-

---

[10] See A. 20 (Ross, Bowman, Wooten, Gibson); A. 23 (Wright); Tr. 243 (Ainsworth).

centage of total membership which would qualify by reason of work credits (A. 107), the union introduced evidence on this subject. That evidence showed that the entire swing shift (approximately 200 employees) worked overtime on 75 percent of the meeting nights (A. 150-153, 158-159). Thus, in all probability this entire group was eligible.[11]

Evidence was also introduced as to the Secretary of Labor's prior interpretations of the "reasonable qualifications" provision of Section 401(e). The Secretary has published an Interpretative Manual setting forth his viewpoint as to the proper interpretation of the statute, to assist unions in complying with the LMRDA (A. 112). Paragraph 422.250 of the Manual (A.204), captioned "Participation in Union Affairs," states a general principle that, absent unusual circumstances, an eligibility rule designed to assure participation in and familiarity with union affairs is a reasonable candidacy qualification:

> "Qualifications reasonably designed to assure that candidates have participated in the affairs of the union and are sufficiently familiar with the industry in which the union operates, would not be considered unreasonable in ordinary circumstances, if uniformly imposed. In the absence of knowledge of any special circumstances which cast doubt upon the validity and reason-

---

[11] The district court "estimated" that "at least 12%" of the swing shift qualified by reason of work credits (A. 38). It did not indicate how it derived this estimate, nor can we construct a rationale for it. On the undisputed evidence, it would appear that 100% of the swing shift qualified. The Secretary's brief (page 6), ignoring the "at least" in the district court's finding, incorrectly states that the "district court estimated that 24 of the 200 swing shift employees satisfied the meeting attendance requirement by reason of absences excused for overtime work." Building upon this incorrect statement, the Secretary's brief (page 23) declares that "nearly 90 percent" of the membership was ineligible. If the entire swing shift qualified, approximately 40 percent of the membership was eligible.

ableness of any of the qualifications, they are not to be considered unreasonable in themselves."

As one specific application of this general principle, the Manual declares that a requirement of 50 percent meeting attendance over a 24 month period (which is greater than the 21 month period involved in the instant case) is a reasonable candidacy qualification, except where attending presents "an unusual degree of difficulty for a significant proportion of the membership; as for example, where the local had an extensive geographical jurisdiction." Manual Par. 422.206 (A. 203). At trial, the Chief of petitioner's Elections Unit conceded that this exception for difficulty in attending is not applicable to the instant case (A. 115).

The Manual distinguishes 75 percent meeting attendance requirements which, it notes, have been judicially declared "unreasonable" absent extremely liberal excuse provisions for non-attendance. Manual, Par. 422.208 (A. 203-204).

In a series of opinion letters, the Secretary has advised that unions with meeting attendance requirements must provide excused absences to those who work during meetings. See, e.g., A. 196-197:

> "[I]f members must work during the time when meetings are held, a requirement of attendance at a given number of meetings may be unreasonable in its application, when there is not adequate provision for excused absences for members who are working at the time meetings are held."

See also A. 198-200.

The Interpretative Manual, in upholding 50 percent meeting attendance rules, does not state an exception for cases where only a small percentage attend (A. 203). Sometime in the mid-1960's, however, the Secretary instituted a lawsuit against a local of the Brotherhood of Railway Carmen on the theory that an otherwise reasonable rule *was* invalidated because only a small percentage attended. But

that lawsuit was withdrawn *only a few months prior to the election involved in the instant case.* In explaining the withdrawal, the Department of Labor stated that the Secretary had conducted "a general review of attendance requirements" and had concluded that a rule should *not* be invalidated simply because a small percentage actually qualify (A. 201-202):

> "The Department originally concluded that there was nothing patently unreasonable about this qualification on office holding, but that the rule was nevertheless of questionable validity because in operation only a few members of the local besides the incumbent officers had satisfied this attendance requirement. . . .
>
> "Subsequent to the institution of this action, a general review of attendance requirements as a qualification for office holding was held by the Secretary of Labor. Upon further consideration of this problem it was determined that measuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that *it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the requirement itself could be reasonably met by all members and was uniformly applied.*" (Emphasis added).

Thus, at the time of the election herein, the Secretary's view was that small percentage does not invalidate (A.

121). *He changed his mind again when he decided to institute the present action, as the Chief of his Elections Unit acknowledged at trial* (A. 122).

The Secretary introduced the expert testimony of his Director of Research, who testified that in his opinion meeting attendance requirements do not increase attendance, and that there are other ways in which members can become familiar with the responsibilities of union office. He acknowledged, however, that in expressing these opinions "I disagree with the Secretary" (A. 147) who, as noted above, has declared that meeting attendance rules serve legitimate union interests. The expert further acknowledged, in response to questioning by the district judge, that while he does "not personally care for" meeting attendance rules, they are "a reasonable way" to assure that candidates are familiar with the responsibilities of union office, provided they are "not too restrictive" (A. 149).

The expert also introduced a study he had prepared of the extent to which meeting attendance requirements for local union office are imposed by International Union Constitutions (A. 190). The study showed that the constitutions of International Unions having 25 percent of all of America's union members impose meeting attendance requirements as a candidacy qualification for local union office (A. 135). Another 7 percent of America's union members are in International Unions whose constitutions expressly leave the use of a meeting attendance requirement to local union option (A. 135). The remainder of the International Union Constitutions are silent on this subject, but the expert testified that within these International Unions there are locals whose *own* bylaws impose meeting attendance requirements (A. 137). It was his guess that "only a minority of Local Unions will have such a provision if it is not required by the National Constitution" (A. 143).

The union sought to introduce two exhibits showing that

in Steelworkers' locals generally, as in Local 6799, the meeting attendance requirement does not preclude contests for union office (A. 209, 210-212). The district court sustained the Government's objection to these exhibits, but only after eliciting a concession from Government counsel that the Government does not contend that the meeting attendance requirement has resulted in an insufficient number of candidates (A. 162-165).[12]

Opinion of the District Court

The district court rejected the union's argument that the Secretary was not entitled to litigate the reasonableness of the meeting attendance rule because it has not been challenged in the internal union proceedings. The court held that the Secretary may sue about any matter discovered in his investigation "conditioned upon the [union] having a reasonable time to make the corrections" (A. 166). But the court concluded that the meeting attendance rule is reasonable (A. 38):

> "The meeting attendance requirement is designed to increase attendance at meetings and insure candidates who have demonstrated interest in union problems, are familiar with them, and better qualified to serve as officers of the union. It is a reasonable requirement, because anyone who wanted to comply with it could have complied by attending, or through the liberal work excuse provision."

The district court found that the use of union facilities to mimeograph one presidential candidate's leaflets constituted a violation of Section 401(g), and accordingly or-

---

[12] Government counsel's ultimate position was as follows (A. 165):

"No, we would not contend there should have been more nominations as to any one particular office.

"We only contend there should have been a broader base from which to nominate for any office."

dered a new election for the office of president only (A. 43-47).

Opinion of the Court of Appeals

The Ninth Circuit affirmed. It did not reach the reasonableness of the meeting attendance rule (A. 54, n. 7), for it held that the Secretary was not entitled to litigate that issue (A. 52-53):

> "[We] are convinced and therefore conclude that Congress intended to empower the Secretary to assert those violations that are fairly apparent from a member's protest to the union and no others."

The court believed that this conclusion follows "logically" from the fact that Congress included an exhaustion requirement in the statute, for "to allow the Secretary wide ranging power to urge 'any' violation would in effect nullify the exhaustion requirement" (A. 53). The court also believed that its conclusion reflected the correct effectuation of Congress' intention, and relied upon the following portions of this Court's decision in *Wirtz* v. *Glass Bottle Blowers Association*, 389 U.S. 463 (1968), as evidence of that intention (A. 53, n. 5, 54):

> "The stated commitment is to postpone government intervention until the union is afforded the opportunity to redress the violation."
>
> * * *
>
> "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs. The extensive and vigorous debate over Title IV manifested a conflict over the extent to which govern-

mental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a 'general congressional policy to allow unions great latitude in resolving their own internal controversies, and, where that fails, to utilize the agencies of Government most familiar with union problems to aid in bringing about a settlement through discussion before resort to the court.' "

SUMMARY OF ARGUMENT

I

Section 402(a) makes exhaustion of union remedies a prerequisite to invocation of the Secretary of Labor's authority. But it does not expressly state whether, after a member has raised some matters within the union, the Secretary may proceed against wholly unrelated matters. "The question is one of statutory construction and must be answered by inference since there is lacking an explicit provision regarding the permissible scope of the Secretary's complaint." *Wirtz* v. *Laborers' Union,* 389 U.S. 477, 481 (1968). As we show, the Court of Appeals correctly held that the Secretary may not sue over matters about which the union did not receive fair notice from a member's internal union complaint.

Resolution of this issue requires an accommodation of the "intertwined objectives" (*Id.* at 484) underlying Title IV. On the one hand, Congress wanted to assure free and democratic elections. On the other, it sought to foster union self-government and minimize governmental interference.

Petitioner concedes that if *no* internal union complaint is made, the Secretary cannot thereafter sue no matter how egregious the statutory violations. Thus, Congress believed that there were values inherent in the exhaustion of union remedies so important as to outweigh the injury to the goal

of "free and democratic elections" resulting from Secretarial impotence. This choice was made consciously, over some Senators' objection that the sacrifice in effective enforcement would be too great.

Should a different result follow when a member exhausts as to one issue, but the Secretary wishes to sue about a wholly unrelated issue? There is no logical reason why Congress should have insisted on exhaustion, yet permit suit about matters not exhausted. But our demonstration need not rest on logic, for the same conclusion follows from an examination of the purposes which exhaustion was designed to serve.

(1) The overall purpose of the LMRDA was to assure that unions would be responsive to the wishes of the membership. Congress was unwilling to give the Secretary authority to seek renovation of every union rule which *he* thought undemocratic; rather Congress limited the Secretary's authority to those rules with which the *members* were dissatisfied—a dissatisfaction which would be manifested through the filing of internal union complaints. This purpose is hardly served if the Secretary, seizing upon a membership complaint about one problem, can challenge other aspects of union procedures with which the membership is content.

(2) Congress was anxious to encourage members' resort to internal union appeals procedures for the resolution of election problems, and to inject the Secretary and the courts only where these internal mechanisms proved incapable, or unwilling, to resolve problems brought before them. *Laborers' Union, supra,* 389 U.S. at 484; S. Rep. No. 187, 86th Cong. 1st Sess. 5, 7, 31 (1959). The Secretary's approach would wholly undermine this statutory purpose. Members would be under no obligation to present all their complaints to the union's judicial tribunal; and respect for these tribunals would be discouraged as members saw elections up-

held by these tribunals set aside by subsequent governmental action. Of course, when union tribunals have been given fair notice and an opportunity to correct, yet fail to do so, they invite the disrespect which subsequent governmental interference will engender. But where, as here, the union tribunal was not presented the issue, and had no opportunity to pass upon it, the undermining of membership confidence engendered by governmental action is wholly unwarranted.

(3) "Congress emphatically gave unions the primary responsibility for enforcing the Act . . ." *Wirtz* v. *Hotel Employees,* 391 U.S. 492, 498 (1968). Indeed, with 45,000 local unions in the United States, it is clear that absent effective self-policing by unions the statutory scheme would crumble. The Secretary is overburdened with his present caseload. If members learned that they need not present all their grievances to their union tribunals for correction, or if those tribunals ceased to function effectively, Title IV would fail. The danger that union tribunals will cease functioning effectively is real; having striven to resolve protests objectively and in compliance with Title IV, only to see the Secretary do an "end run" with issues never presented to them, these tribunals will quickly assume an attitude of "why bother?" The responsibilities which Congress so "emphatically" hoped would be borne by union tribunals will as emphatically be shucked if the Secretary persists in making a joke of internal union procedures. And if that happens, the Secretary is not equipped to take up the slack.

(4) Finally, Congress was anxious to assure prompt resolution of election disputes, and for that reason established time limits at each stage under Section 402. That timetable is destroyed if members can withhold some of their complaints from the union tribunal, only to have them raised for the first time by the Secretary months later.

These Congressional concerns were "regarded by Congress as critical to the statute's objective of fostering union

self-government." *Laborers' Union,* *supra,* 389 U.S. at 484. The key to their accommodation with the statutory goal of "free and democratic election"—as strongly intimated by this Court in *Wirtz* v. *Glass Bottle Blowers Association,* 389 U.S. 463, 470-473 (1968)—is to permit the Secretary to advance those issues of which the union tribunal had fair notice and an opportunity to correct, but not issues which were not presented to the union tribunal. The legislative history confirms that this is the result which Congress intended.

II

The Steelworkers' 50 percent meeting attendance rule is a "reasonable qualification" for candidacy. The rule serves legitimate union purposes—it encourages attendance at the union's official business meetings; requires dissidents to attend the meetings, thereby providing a check against unbridled and arbitrary control of the union's affairs by the incumbent officers; assures candidates who have demonstrated an interest in the union's affairs by the effect, a course in union management; and provides, in to union leadership. The rule does not disqualify any member from becoming a candidate; every member can qualify simply by devoting two hours, every other month, to union affairs. In practice, the rule does not prevent opposition to the incumbent union officers; here, all incumbents were challenged by rivals who qualified under the rule, and the same pattern exists throughout the Steelworkers' Union.

The fact that a relatively small percentage of the members choose to qualify themselves does not make the rule unreasonable. The point is that every member *can* qualify himself without difficulty, and thus the rule does not retard opposition to the incumbent leadership. Indeed, at the time this election was held, it was the Secretary of Labor's stated view that small percentage does not invalidate an otherwise reasonable meeting attendance rule; he changed his mind when he decided to institute this lawsuit.

The Union grants work credits to those who are working at the time the meeting is held, in order to assure that every member will be able to qualify. Indeed, the Secretary of Labor insists that such credit be given if meeting attendance rules are to be responsible. Thus, the granting of such credits does not invalidate the rule.

ARGUMENT

I. THE SECRETARY MAY NOT LITIGATE UNDER TITLE IV MATTERS WHICH WERE NOT RAISED WITHIN THE UNION

Section 402(a) makes the exhaustion of internal union remedies a prerequisite to the invocation of the Secretary's authority under Title IV. Section 402(b) then provides that the Secretary, upon receipt of a complaint from a member who has exhausted his union remedies pursuant to Section 402(a), shall investigate "such complaint" and, if he finds "a violation" which has not been remedied, he "shall . . . bring a civil action." The statute does not state, at least in literal terms, the extent to which the Secretary's authority to sue under Section 402(b) is limited to the matters exhausted by the member under Section 402(a). "The question is one of statutory construction and must be answered by inference since there is lacking an explicit provision regarding the permissible scope of the Secretary's complaint." *Wirtz* v. *Laborers' Union,* 389 U.S. 477, 481 (1968).

In *Laborers' Union,* a member complained within the union about the conduct of a run-off election. His complaint, however, was one which would have been equally applicable to the original election. The union treated the complaint narrowly, and ruled only with respect to the run-off. The member then complained to the Secretary, who instituted suit against the original election. The union argued that the Secretary was barred from challenging the

original election, because the member's internal union complaint had been directed only at the run-off. In response the Secretary argued that his powers under Section 402(b) extend to any violation of Title IV, even those which clearly were not raised within the union. This Court expressly declined to pass upon the Secretary's contention, finding that the member's internal union complaint had been sufficient to provide the union "fair notice" of the violation ultimately alleged by the Secretary (389 U.S. at 481-482):

> "On the facts of this case we think the Secretary is entitled to maintain his action challenging the June 8 election because respondent union had fair notice from the violation charged by Dial in his protest of the run-off election that the same unlawful conduct probably occurred at the earlier election as well. *We therefore need not consider and intimate no view on the merits of the Secretary's argument that a member's protest triggers a § 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of § 401 discovered in his investigation of the member's complaint.*" (Emphasis added).[13]

The present case squarely poses the issue which was left undecided in *Laborers' Union*. For here the Secretary concedes that the internal union complaint did not provide the union fair notice that its meeting attendance requirement was under challenge nor provide an opportunity for its correction.

Resolution of this issue requires an accommodation of the "intertwined objectives" (*Laborers' Union*, 389 U.S. at 484) inherent in Title IV. On the one hand, Congress wanted to assure "free and democratic elections." *Wirtz* v. *Glass Bottle Blowers Association*, 389 U.S. 463, 470-471 (1968); *Wirtz* v. *Hotel Employees*, 391 U.S. 492, 496

[13] See also *Wirtz* v. *Hotel Employees*, 391 U.S. 492, 495, n. 4 (1968), where the Court again found it unnecessary to decide this issue.

(1968). On the other, it sought to foster union self-government, and minimize Governmental interference. "[T]he exhaustion requirement was regarded by Congress as critical to the statute's objective of fostering union self-government." *Laborers' Union, supra,* 389 U.S. at 484. "Congress emphatically gave unions the primary responsibility for enforcing compliance with the Act. . . ." *Hotel Employees, supra,* 391 U.S. at 498.

Petitioner's brief ignores the second of these Congressional objectives, and argues on the premise that the sole Congressional objective was to assure that each and every election violation is subject to correction at the instance of the Secretary. That approach, of course, cannot be reconciled with the existence of the exhaustion requirement in Section 402(a). It is clear, and petitioner reluctantly concedes, that if *no* internal union complaint is made, the Secretary cannot thereafter sue no matter how egregious the statutory violations.[14] Nor can the Secretary cure the failure to exhaust by giving the union "notice" before suing, the panacea which is proposed in petitioner's brief (page 21). Plainly, Congress believed that there were values inherent in the exhaustion of union remedies so important as to outweigh the injury to the goal of "free and democratic elections" resulting from Secretarial impotence. Congress made this choice consciously, over the objection of a minority of Senators, led by Senator Goldwater, who argued vigorously that the exhaustion requirement would hinder effective enforcement of the statute. See, e.g., Cong. Rec. 16489, Senate, Aug. 20, 1959 (remarks of Sen. Goldwater); Senate Rep. No. 187, 86th Cong. 1st Sess., pp. 103-104 (Minority Views).

---

[14] In such instances, the Secretary has the power to investigate under Section 601 of the Act, 29 U.S.C. § 521, a power which exists "without regard to the filing of a complaint by a union member. But when the Secretary investigates pursuant to § 601 without a member's complaint, his remedy is limited to disclosure of the violation discovered." *Laborers Union supra* 389 U.S. at 482, n. 5.

The question here is whether a different result should follow when a member exhausts as to one issue, but the Secretary wishes to sue as to a wholly unrelated issue. We will show herein that the objectives which Congress sought to accomplish by the exhaustion requirement would not be served by the Secretary's proposed construction of the statute. Before doing so, however, it is worth noting that the Secretary's construction is totally illogical. What possible motivation could Congress have had to interpose exhaustion as a prerequisite to Secretarial action, yet to permit exhaustion of a single issue to give the Secretary *carte blanche?* Petitioner suggests none, and none is apparent to us. If exhaustion is a prerequisite to suit—as surely it is—the required exhaustion must be a *relevant* exhaustion, i.e. it must be one which afforded the union fair notice of, and an opportunity to correct, the violations ultimately challenged in the lawsuit.

Our demonstration need not rest on logic alone. For it also follows from a recognition of the purposes which exhaustion was designed to serve. Those purposes are several, and we discussed them *seriatim.*

(1) The overriding purpose of the LMRDA was to assure that unions would be responsive to the wishes of the membership. Thus Congress was unwilling to give the Secretary authority to seek renovation of every union rule which *he* thought undemocratic; rather Congress limited the Secretary's authority to those rules with which the *members* were dissatisfied—a dissatisfaction which would be manifested by the filing of membership complaints under the internal union protest procedures. As petitioner's brief (page 20) recognizes, the exhaustion requirement was intended "to assure that the results of union elections will not be disturbed if they are satisfactory to all members of the Union." This purpose is hardly served if the Secretary, seizing upon a membership complaint about one problem,

can challenge other aspects of union procedures with which the membership is content.

This case furnishes a good example. The present Steelworkers meeting attendance rule is the product of rank-and-file delegate action taken over the objection of USWA's officers. Its application went wholly unchallenged in Local 6799's election. The only complainant —Nicholas Hantzis —was himself eligible under the rule, and was prepared to testify at trial that he considered the rule to serve important union purposes (pp. 6-7, n. 7, *supra*). He protested within the union because his opponent used union facilities to run off campaign literature—a protest which the Secretary admits evinced no dissatisfaction with the meeting attendance rule. Why, in these circumstances, should the Secretary be permitted to override the general membership satisfaction with the meeting attendance rule? The answer is that he is not entitled to do so, and that the exhaustion requirement was designed to preclude precisely such outside interference with union self-government.

(2) Congress was anxious, as part of its effort to promote union self-government, to preserve and stimulate the utilization of internal union appeals procedures for the resolution of election problems, and to inject the Secretary and the Courts only where those internal mechanisms proved incapable, or unwilling, to resolve problems brought before them. "By channeling members through the internal appellate processes, Congress hoped to accustom members to utilizing the remedies made available within their own organization. . . ." *Laborers' Union, supra,* 389 U.S. at 484. The Senate Report stated the "general approach of the bill" as follows:

> "A strong independent labor movement is a vital part of American institutions. . . . The overwhelming majority [of unions] are honestly and democratically run. *In providing remedies for existing evils the Sen-*

ate should be careful [*not*] *to undermine self-government within the labor movement. . . .*

"In acting on this bill the committee followed three principles:

"1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. (Moreover, in establishing and enforcing statutory standards *great care should be taken not to undermine union self-government. . . .*)" S. Rep. No. 187, 86th Cong. 1st Sess. (1959), pp. 5, 7 (emphasis ours).

This "general approach" was carried forward into the specific portion of the bill—Title IV—which dealt with union elections. The Senate Report, after listing the substantive requirements of Title IV, explained its enforcement in these terms:

"The foregoing provisions are to be enforced by the Secretary of Labor, upon complaint of any union member, through court action. . . . In filing a complaint *the member must show that he has pursued any remedies available to him within the union and any parent body in a timely manner.* This rule preserves a maximum amount of independence and self-government *by giving every international union the opportunity to correct improper local elections. If the member is denied relief* by the union or can obtain no decision from the union one way or the other within 3 months, he may complain to the Secretary. . . ." (S. Rep. No. 187, 86th Cong. 1st Sess. (1959), p. 31, emphasis added).

The Secretary's approach would wholly undermine this statutory purpose. Members would be under no obligation to present all their complaints to the union's judicial body.

Presenting only a single matter would suffice to give the Secretary *carte blanche*. Indeed, members would be motivated to withhold some issues to avoid the risk of an enlightened judicial opinion from the union's tribunal which might persuade the Secretary not to challenge the election.

Moreover, the Secretary's construction would weaken membership respect for union judicial procedures, rather than encourage such respect as Congress intended. Once a union's highest judicial body has upheld an election, respect will be lost if, as a result of government action, the election is set aside. It hardly matters whether the overruling results from an agreement with the Secretary to avoid suit or from a court order at the end of a suit. Either way, the membership will grow to feel that the union's judicial machinery is inadequate.[15] (The impact would be about the same as a confession of error by the Attorney General after he had won a case in this Court; the public would view it as evidence of this Court's misfeasance or malfeasance.) Of course, when union tribunals have been given fair notice and an opportunity to correct, yet fail to do so, they invite the disrespect which subsequent government interference will engender. *Cf. Laborers Union, supra.* But where, as here, the union tribunal was not presented the issue, and thus had no opportunity to pass upon it, the undermining of membership confidence engendered by governmental action is wholly unwarranted.

USWA's International Executive Board has compiled a commendable record of responsiveness to its members' election protests, providing remedial action in a majority of the case which come before it (*supra,* page 6). Congress did not intend that confidence in that tribunal be under-

---

[15] Thus, the fact that the Secretary gives the union notice and an opportunity to correct, before suing about matters not raised before the union's judicial body, is not an adequate substitute for the exhaustion contemplated by Congress.

mined, as it will be if the Secretary's position is adopted by this Court.

(3) Congress looked upon union tribunals as the principal enforcement mechanisms under Title IV, with the Secretary of Labor to be used only where union tribunals failed to do their job. "Congress emphatically gave unions the primary responsibility for enforcing the Act. . . ." *Hotel Employees, supra,* 391 U.S. at 498. Indeed, reliance upon self-policing by unions is essential if the statutory scheme is not to tumble. There are 45,000 local unions in the United States (A. 137), each of which must conduct elections at least once every three years (Section 401(b), 29 U.S.C. § 481(b)). If international unions did not undertake to correct violations, or if members learned that they need not present all their claims to the unions for correction, the burden imposed upon the Secretary would bring the statutory mechanism to a grinding halt. Even with his present case load, the Secretary cannot effectively prosecute violations of Title IV.[16] If union tribunals ceased functioning effectively, or if members withheld issues from them, Title IV could perform no meaningful function.

The danger that union tribunals will cease functioning effectively is not unreal. This Court can well imagine the reaction of union tribunals which have striven to resolve the protests which come before them objectively and in compliance with Title IV's mandate, only to have the Secretary do an "end run" with issues never presented within the union. An attitude of "why bother?" sets in quickly. It is fair to say that the responsibilities which Congress so "emphatically" hoped would be borne by union tribunals will

[16] Thus, of the eight actions brought challenging 1967 local union elections within USWA, only three were tried before expiration of the 1967-1970 term of office. The Secretary simply lacked adequate personnel to prosecute the remainder promptly. In consequence, the officers allegedly elected in violation of Title IV were able to serve out their terms. See also *Wirtz* v. *Glass Bottle Blowers, supra.*

as emphatically be shucked if the Secretary persists in making a joke of internal union procedures. This result might be tolerable (even if directly contrary to the Congressionally-intended scheme) if the Secretary were equipped to assume the slack. The fact is that he is not, and that Congress "emphatically" did not intend that he should.

(4) Finally, Congress was anxious to assure prompt resolution of election disputes, and for that reason established time limits at each stage under Section 402. Promptness is destroyed if members can withhold some of their complaints from the union's judicial tribunal, only to have them raised for the first time by the Secretary months later.

The Congressional concerns enumerated above were "regarded by Congress as critical to the statute's objective of fostering union self-government." *Laborers' Union, supra,* 389 U.S. at 484. They must be accorded weight in determining "the permissible scope of the Secretary's complaint" (*Id.* at 481). The key to their accommodation with the statutory goal of "free and democratic elections" is found, we believe, in *Glass Bottle Blowers Association, supra:*

> "Title IV's special function in furthering the overall goals of the LMRDA is to insure 'free and democratic' elections. The legislative history shows that Congress weighed how best to legislate against revealed abuses in union elections *without departing needlessly from its long standing policy against unnecessary governmental intrusion into internal union affairs.* The extensive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary or desirable. In the end there emerged a 'general Congressional policy to allow unions great latitude in resolving their own internal controversies, and, *where that fails,* to utilize the agencies of government most familiar with union problems to aid in

bringing about a settlement through discussion before resort to the courts.' *Calhoon* v. *Harvey,* 379 U.S. 134, 140." (389 U.S. at 470-471; emphasis added; footnotes omitted).

* * *

"Even when an election violates [Title IV's] standards, the stated commitment is to postpone governmental intervention *until the union is afforded the opportunity to redress the violation.* This is the effect of the requirement that a complaining union member must first exhaust his internal union remedies before invoking the aid of the Secretary. 29 U.S.C. § 482(a). *And if the union denies the member relief* and he makes a timely complaint to the Secretary, the Secretary may not initiate an action until his own investigation *confirms* that a violation of Section 401 affected the challenged election. . . . Congress has explicitly told us that these provisions were designed to preserve a 'maximum amount of independence and self-government *by giving every international union the opportunity to correct improper local elections.*' S. Rep. No. 187, 86th Cong. 1st Sess. 21, I Leg. Hist. 417.

"But it is incorrect to read *these provisions circumscribing the* time and *basis for the Secretary's intervention* as somehow conditioning his right to relief *once that intervention has been properly invoked.* Such a construction would ignore the fact that Congress, although committed to minimal intervention, was obviously equally committed to making that intervention, *once warranted,* effective in carrying out the basic aim of Title IV." (389 U.S. at 472-473; emphasis added; footnote omitted).

As *Glass Bottle Blowers* suggests, the only appropriate accommodation of the "intertwined objectives" of Title IV is that the Secretary may advance those issues of which the union tribunal had "fair notice" and an opportunity to cor-

rect, but may not advance issues which were not presented to the union tribunal. The arguments advanced by petitioner for a contrary construction are fallacious, as we now show.

Petitioner's brief (pp. 15-16) argues that the reasoning of *Laborers' Union* supports its proposed construction. In particular, it relies upon this Court's statement that the scope of the Secretary's complaint cannot be "immutably fixed by the artfulness of a layman's complaint which often must be based on incomplete information," 389 U.S. at 482. Petitioner reasons (brief, p. 15):

> "As this Court recognized in *Laborers' International*, union members do not, as a rule, file carefully drafted complaints. 389 U.S. at 482. Consequently, if the complaint were the measure of the Secretary's powers, he would often be artificially limited, as here, by *technical flaws* in that document or by the individual member's failure to appreciate the scope or consequences of *the violation of which he is complaining.*" (Emphasis added).

But the instant case is not one where the deficiency was due to artless drafting, nor to technical flaws, nor to a failure on the part of the complaining member to appreciate "the scope or consequences of the violation of which he is complaining." Rather, it is one where the internal union complaint related to entirely different matters than that which the Secretary seeks to litigate. *Laborers' Union* cannot be stretched to cover this case. Not only did this Court expressly decline to do so, but its rationale depended entirely upon the union's receipt of "fair notice" from the internal union complaint (389 U.S. at 484-485):

> "It is true that the exhaustion requirement was regarded by Congress as critical to the statute's objective of fostering union self-government. By channeling members through the internal appellate processes, Con-

gress hoped to accustom members to utilizing the remedies made available within their own organization; *at the same time, however, unions were expected to provide responsible and responsive procedures for investigating and redressing members' election grievances.* These intertwined objectives are not disserved but furthered by permitting the Secretary to include in his complaint at least any § 401 violation he has discovered which the union had a fair opportunity to consider and redress in connection with a member's initial complaint.

"... Surely this is not the responsible union self-government contemplated by Congress in allowing the unions great latitude in resolving their own internal union controversies. *In default of respondent's action on a violation which it had a fair opportunity to consider and resolve in connection with Dial's protest,* the Secretary was entitled to seek relief from the court ..." (emphasis added).

Petitioner's brief (pp. 19-20) also attempts to denigrate the function to be performed by union tribunals. It insists that Section 402(a) did not endow unions with any "fact-finding or policy determining functions"; that Congress "has . . . not conferred any form of governmental authority over these disputes on the unions"; and that union appellate tribunals "tend to have an adversary interest in such disputes." Not surprisingly, these assertions are not accompanied by any citation of authority. For they run directly *counter* to the Congressional scheme. Congress *did* endow unions with fact-finding and policy determining functions, and "emphatically gave unions the primary responsibility for enforcing compliance with the Act . . ." *Hotel Employees, supra,* 391 U.S. at 498. And the assertion that union tribunals have an adversary interest is a "cheap shot" which is not only contrary to fact (the vast majority of cases, as here, involve complaints to international union tri-

bunals involving local union elections), but contrary to Congress' finding that "unions have made a commendable effort to correct internal abuses." S. Rep. No. 187, *supra*, page 7.

Petitioner's brief (pp. 14-15) argues that Congress' use of the words "a violation" in Section 402(b), rather than "such allegation" as appeared in a different proposed bill (S. 1002, 86th Cong. 1st Sess., 105 Cong. Rec. 2067), demonstrates a Congressional intention to permit the Secretary to sue about any matter disclosed by his investigation. This argument has already been rejected by this Court, which concluded in *Laborers' Union* that "there is lacking an explicit provision regarding the permissible scope of the Secretary's complaint" (389 U.S. at 481),[17] and in any event is a resort to literalism in a statute which this Court has said cannot be construed literally. *Glass Bottle Blowers Association, supra,* 389 U.S. at 468:

> "We have cautioned against a literal reading of Congressional labor legislation; such legislation is often the product of conflict and compromise between strongly held and opposed views, and its proper construction frequently requires consideration of its wording against the background of its legislative history and in the light of the general objectives Congress sought to achieve . . . The LMRDA is no exception."

Moreover, the characterization of S. 1002 as "a prior draft of the bill" which was ultimately enacted (petitioner's brief, page 14) is inaccurate. The language of what ultimately became Sections 402(a) and (b) of the Act was hardened into final form a year earlier, as Sections 302(a) and (b) of the Kennedy-Ives Bill (S. 3974, 85th Cong. 2nd Sess.). S. 1002 was a completely separate bill, introduced

[17] Petitioner's brief in *Laborers' Union* (at page 45) had urged precisely the same argument based upon the difference between Section 402(b) and the provisions of S. 1002.

after the language of S. 3974 had been fixed, containing a completely different procedure for regulating elections from that contained in S. 3974 and the Act; it proceeded from far different premises than those shared by the drafters of the Act; and it was not even before the Congress for consideration at the time the language of Section 402 was being considered. In these circumstances, the characterization of the final language as a conscious rejection of S. 1002's language is pure fiction, entitled to no weight in construing the statute. "The interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers." *Trailmobile Co.* v. *Whirls,* 331 U.S. 40, 61 (1947).

Finally, petitioner's brief (page 21) suggests that the Secretary's notice to the union prior to suit, in which he invites the union to correct the violations found in his investigation, is an adequate substitute for exhaustion within the union. The simple answer is that this notice serves none of the functions which the exhaustion requirement was designed to serve. It does not limit the Secretary's power to matters with which the union's membership is dissatisfied; it does not encourage (indeed, it discourages) respect for the union's judicial tribunals; it does not place the principal responsibility for enforcement of Title IV upon the union's judicial tribunals; and it does not assure the prompt exposure and resolution of election grievances in accordance with the statutory time-table. If Congress had thought Secretarial notice as effective as exhaustion in serving the statutory purpose, it surely would not have structured the statute with the cumbersome exhaustion-plus-complaint procedure contained in Section 402. It would have been much simpler to construct a procedure—as was later provided in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5—in which the administrative agency must provide an opportunity for "conciliation" prior to the institution of legal proceedings, but exhaustion is not required. That Congress did not adopt such a procedure, but instead

required exhaustion, emphasizes the importance which Congress attached to minimizing governmental intrustion in union affairs. Congress' decision to keep "hands off" should not be construed out of existence.

The overwhelming majority of the lower courts have concluded, as we urge, that the Secretary may not sue about issues of which the union did not receive "fair notice" in the internal union proceedings.[18] We submit, for the reasons set forth above, that these decisions are correct.

II. THE MEETING ATTENDANCE REQUIREMENT IS REASONABLE

Section 401(e) of the LMRDA, 29 U.S.C. § 481(e), provides that "every member in good standing shall be eligible to be a candidate and to hold office (subject to . . . reasonable qualifications uniformly applied)."

At issue in this case is the reasonableness of the meeting attendance requirement which the Constitution of Defendant Steelworkers imposes in the elections of officers of each of its 3,700 local unions (A. 156). The rule requires that, to be eligible for candidacy, a member must have attended half the regular meetings of his local union during the 36 months preceding the election, with credit given for meetings the member could not attend because of his Union activities or working hours. (A. 167).

---

[18] Petitioner's brief (page 13, n. 3) cites three district court decisions favoring his construction, and one ("see, also") which is ambiguous. These are, we believe, the only decided cases which have not rejected petitioner's construction. A legion of decisions *have* rejected petitioner's construction. In addition to those cited in petitioner's brief (*ibid*), see *Wirtz* v. *Local Unions No. 9 etc.*, 366 F. 2d 911, 913-914 (10th Cir. 1966), vacated as moot, 387 U.S. 96 (1967); *Wirtz* v. *Hotel, Motel & Club Employees*, 381 F. 2d 500, 506(2d Cir. 1967), reversed on other grounds, 391 U.S. 492 (1968); *Wirtz* v. *Local 257, Glass Bottle Blowers*, 273 F. Supp. 746 (D.N.J. 1967); *Wirtz* v. *Local 174, American Federation of Musicians*, 272 F. Supp. 294 (ED. La. 1967); *Wirtz* v. *Local Union No. 406*, 254 F. Supp. 963 (E.D. La. 1966).

In this action, the Secretary of Labor is attacking the 1967 election at Local 6799 because the meeting attendance requirement was applied in that election. Actually, because Local 6799 was not formed until 1965, it had held only 21 regular meetings, so that the effect of the rule at this Local was to require attendance (or credit) at eleven meetings. Regular meetings were held once a month and lasted approximately two hours. The rule thus imposed upon members the obligation to devote about two hours to Union affairs every other month. Attendance was not difficult for any member; all of Local 6799's members work at a single plant, and the meeting hall is only a 15 minute drive from the plant.

All three district courts which have ruled on the validity of the Steelworkers' meeting attendance requirement have concluded that it is a "reasonable qualification" within the meaning of the LMRDA (*supra*, p. 4). In thus holding, these courts were actually agreeing with principles which the Secretary of Labor has enunciated as to the proper interpretation of the Act. The Secretary, who is vested with the major responsibility for enforcing the election provisions of the LMRDA, has published an Interpretative Manual declaring that, absent difficulties in attendance which admittedly are not present here, 50 percent meeting attendance requirements spanning two years are reasonable.[19] That viewpoint "is entitled to great weight" in construing the statute. *Wirtz* v. *Local 406, Operating Engineers*, 254 F. Supp. 962 (E.D.La. 1966); *United States* v. *American Trucking Assns.*, 310 U.S. 534 (1940); *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294 (1933).

We believe, as the Secretary's Interpretative Manual suggests and the district court held, that the rule applied in

[19] The Manual is silent as to the validity of a 50% meeting attendance requirement spanning 36 months, the period applicable to Steelworkers' local unions which, unlike Local 6799, are not newly formed. See *infra*, pp. 45-46.

the instant case is a reasonable candidacy requirement. To further support our claim, we show herein that:

(A) The rule is designed to accomplish legitimate union objectives—objectives which the Secretary of Labor repeatedly has recognized validate an eligibility requirement;

(B) The purpose of Title IV of the LMRDA was to eradicate an evil which Congress found intolerable —that incumbents were able to keep themselves entrenched through a series of undemocratic devices, including eligibility requirements which disqualified all or virtually all potential opponents—and the meeting attendance rule in this case does not fit the category of evil against which Congress legislated; and

(C) The arguments advanced by petitioner for striking down this rule—and particularly the reliance on the small percentage of members who actually qualified—do not warrant invalidating the rule.

A. The Steelworkers' Meeting Attendance Rule Is Designed to Accomplish Legitimate Union Purposes

Prior to the institution of this action, defendant International explained to representatives of the Secretary of Labor the three reasons why it desired retention of the meeting attendance rule.

(1) Defendant International has an institutional interest in encouraging sufficient attendance at local union meetings to assure that there is a check upon the unbridled control of the Local's affairs by the incumbent officers. The regular meeting is the place where the official business of the Local is conducted, where its policies are determined, and where the decisions are made on how its treasury is to be spent. Defendant International considers it essential that sufficient members attend to prevent the incumbent local union officers from making these decisions without effective

membership control. Since there is generally apathy among workingmen about attending union meetings (A. 145-146), International regards some encouragement as essential to secure membership attendance. The eligibility requirement is uniquely well suited to that purpose, for it compels those who are dissatisfied with their incumbent leadership (and who wish to challenge that leadership at the next election) to attend the meetings.

Obviously the rule had its intended effect at Local 6799. Average attendance at meetings was 70 (A. 16-17, 37).[20] Since there are only 11 officers, this means that on the average nearly 60 non-officers attended each month. The officers were thus denied any opportunity to exercise dictatorial control. Moreover, when the 1967 elections were held, each of the incumbent officers was challenged by one or more opponents who satisfied the meeting attendance requirements.

The Secretary of Labor, in a series of opinion letters, has affirmed that meeting attendance requirements are "a reasonable means of encouraging participation in the affairs of the union." (A 196-197, 194-195, 198-200, 201-202).

(2) Defendant International also has an institutional desire to assure that those who seek office in its locals have demonstrated at least minimal interest in the union's affairs. The validity of that purpose was recognized in *Goldberg* v. *Amarillo General Drivers,* 214 F. Supp. 74 (N.D. Tex., 1963):

> "It is true enough that a union organization has the right to exercise proper discipline of members and prescribe conditions which may be tests of good faith or designed for tokens of interest in the welfare of the union, such as an extended period of membership, *or regular attendance at meetings . . .*"

---

[20] The meetings were held in two sections, to accommodate the fact that different members worked different shifts, but the two sections constituted a single meeting. The average attendance figure represents the total of those attending the day shift and night shift sections.

Likewise, the Secretary of Labor has attested that unions have a "legitimate interest" in "obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization." (A. 194-195, 201-202).

(3) Finally, International desires that those who obtain local union office have a working knowledge of the union's affairs, so that they are at least minimally competent to perform the myriad responsibilities which are imposed by International's Constitution and by the growing number of federal laws regulating union conduct.[21] Attendance at meetings is the simplest and most effective way to assure that members acquire that knowledge, for that is where the local's business is discussed, debated and transacted.

The Secretary of Labor has recognized the reasonableness of eligibility requirements which assure that members are familiar with the union's problems (A. 204). Likewise, this Court appears to have viewed with approval a rule requiring attendance at classes in union management as a prerequisite to candidacy. *Wirtz* v. *Hotel, Motel & Club Employees,* 391 U.S. 492, 505 (1968). The regular meetings are *this* Union's classes in union management. Manifestly, it would be prohibitively expensive, as well as redundant, for International to conduct a separate course in union management for the members at each of its 3,700

---

[21] See, e.g., Titles II and V of the LMRDA, 29 U.S.C. §§431-432 and 501-504; Section 8(b) of the LMRA, 29 U.S.C. §158(b); Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000(e); and the judicially created "duty of fair representation," *Vaca* v. *Sipes,* 386 U.S. 171 (1966). For a particularly lively description of the responsibilities which rest upon the shoulders of a Steelworkers' local union president, see the lead article in *The Wall Street Journal* of October 24, 1969, at page 1, entitled "How Big Teeny Kranz, Local Union President, Battles for His Troops: He Talks Tough, Works Hard On Problems at Steel Mill." In the 1970 elections, Mr. Kranz suffered the fate of many Steelworkers local union officers: he was defeated by an opponent who qualified under the meeting attendance rule.

local unions, when the local union meetings already constitute precisely such a course.

B. The Landrum-Griffin Act Was Not Enacted to Strike Down the Steelworkers' Meeting Attendance Rule

The LMRDA, more popularly known as the "Landrum-Griffin Act," was enacted in 1959 to eradicate certain intolerable evils which had been disclosed in the McClellan Committee hearings relating to the management of a few unions. Congress made clear its view that "the overwhelming majority" of unions are "honestly and democratically run," and emphasized that the Act was being passed to cure evils found in a handful of unions which had abused their public trust. See, e.g., S. Rep. No. 187, 86th Cong. 1st Sess. (1959), page 5.

The most publicized of these evils related to racketeering and gangsterism, and much of the Act is devoted to eliminating these blights. Congress also found, however, that a few unions had so structured their election machinery that it was impossible to remove entrenched incumbents. To cure this problem, Congress enacted Title IV, the "Elections" section of the Act.

Title IV does not purport to regulate every detail of union elections. Indeed, Congress made clear that it did *not* wish to impose any inflexible rules which would hinder diversity in the administration of democratic election procedures; rather, its object was to enunciate certain broad principles of fairness, within which unions could mold specific procedures designed to accommodate their particular needs and circumstances. See, e.g., S. Rep. No. 187, 86th Cong. 1st Sess., 5-7 (1959); *Wirtz* v. *Local 153, Glass Bottle Blowers*, 389 U.S. 463, 471 (1968). Congress did not intend to "dictate to the Unions what their constitution and bylaws procedure shall be in conducting their elections" or to "impos[e] upon Unions [its] notions of what an election straightjacket should be," 105 Cong. Rec. 6741 (April 25, 1959; Remarks of Sen. Morse).

One of the broad principles enunciated in Title IV was the right of members to be candidates subject to "reasonable qualifications uniformly imposed." No definition of reasonableness was supplied. But in light of the broad objectives of the Act, it is plain that a rule would be unreasonable if its effect was to preclude opposition to incumbent leadership, i.e. if it disqualified the dissident elements of the membership from challenging incumbents.

That is, indeed, how this Court interpreted the clause in *Wirtz* v. *Hotel Employees,* 391 U.S. 492. The case involved the validity of a union bylaw allowing only those who had held prior office in the union to run for higher office. The Court noted that only 1 percent of the members had held prior office; that many of these had been appointed by the incumbents to fill vacancies, thus "enabl[ing] the incumbent group to qualify members for elective office by a practice not available to dissidents"; and that in practice endorsement by the incumbent group was necessary to get elected to lower office, thus making it impossible for dissidents ever to qualify to run for higher office. The Court declared that "control by incumbents through devices which operate in the manner of this bylaw is precisely what Congress legislated against in the LMRDA." 391 U.S. at 505. More generally, the Court stated:

> "Unduly restrictive candidacy qualifications can result in the abuses of entrenched leadership that the LMRDA was expressly enacted to curb. The check of democratic elections as a preventive measure is seriously impaired by candidacy qualifications which substantially deplete the ranks of those who might run in opposition to incumbents." 391 U.S. at 499.

It is difficult to see how this legislative objective is thwarted by the meeting attendance rule involved in the instant case. The rule disqualifies no-one. Every member can qualify by the non-burdensome step of devoting two

hours, every other month, to his union's affairs. In practice, the rule does not entrench incumbent leadership. Not only were the incumbents challenged by qualified opponents in the instant case, but that same effect is observable throughout the Steelworkers' union. (A. 209-212). Indeed, Government counsel conceded that the Government does not contend that the rule resulted in an insufficient number of candidates (A. 165). Moreover, the rule actually fosters the objectives of the Act, for by requiring dissidents to attend local union meetings, it assures that incumbents cannot administer the affairs of the union in an unbridled or arbitrary manner.

Furthermore, the widespread incidence of meeting attendance requirements in union elections strengthens the view that Congress did not intend their abolition. This Court has noted, with respect to another provision of the Act, that Congress did not intend to outlaw provisions in widespread use, but only those employed by the small minority of unions having undemocratic procedures, *Musicians v. Wittstein*, 379 U.S. 171, 178 (1964). It is hardly likely that Congress—having heard no testimony of abuses stemming from meeting attendance rules, and making no mention of them in the legislative history—intended to strike down so widespread a practice by its insistence that candidacy qualifications be "reasonable."

Of course, a particular meeting attendance rule may be so harsh, or its application so unfair, as to have the effect of entrenching incumbent leadership. Indeed, there have been four cases in which such a finding was made. These cases are so unlike the instant case that, by contrast, they prove the validity of the Steelworkers' rule. For the convenience of the Court, we have summarized these cases in an appendix to this brief. In these cases, the rules were much harsher than that in the instant case; they favored

incumbents, who were *paid* to attend meetings[22]; and their effect was to leave all or most of the incumbents without opposition.

C. Petitioner's Objections to the Steelworkers' Meeting Attendance Rule Are Without Merit

At the outset of this litigation, petitioner advanced numerous objections to the meeting attendance rule as it was applied in Local 6799's election. Most of these were factually incorrect, were refuted at trial, were rejected by the district court, and were abandoned on appeal. By a process of elimination, there appear to be three remaining grounds of attack:

(1) The rule is unreasonable because only a small percentage of the members qualified;

(2) The rule is unreasonable because some members got credit for working during meetings; and

(3) The rule is unreasonable because of the three-year period which, petitioner alleges, is apt to reduce the number qualifying.

These contentions are invalid on both factual and legal grounds.

(1) *The Percentage Qualifying*

Petitioner's principal contention is that the rule is "unreasonable" because only a small percentage of the members actually qualified. At the outset, it is well to note that petitioner's factual assumption is probably wrong. When this suit was instituted, the Secretary was under the erroneous impression that only 6.3 percent of the members were eligible (A. 189). This figure represented the number who actually attended eleven meetings, but totally overlooked the many members who might have qualified by reason of a combination of meeting attendance and work credits. When work credits are taken into account, the only per-

[22] In the instant case, incumbents were *not* paid for attending meetings (Record in the Court of Appeals, pp. 114-115).

missible conclusion on this record is that approximately 40 percent of the members were eligible (see page 10, n. 11, *supra*).

In any event, whatever the percentage who qualified, we submit it is irrelevant to the reasonableness of *this* rule. The point is (as the district court found) that every member *could have* qualified, simply by attending half the meetings. This rule, thus, is unlike those which *prevent* members from qualifying who wish to do so, e.g. the "prior office holding" rule declared invalid by this Court in *Wirtz* v. *Hotel Employees*. It is fair to say that the meeting attendance rule disqualifies no-one. Members disqualify themselves by their unwillingness to devote two hours every other month to union affairs.

The Secretary of Labor has repeatedly flip-flopped on the question whether the percentage qualifying is relevant in determining the validity of an otherwise reasonable meeting attendance rule (A. 116-123). We believe the Secretary's conclusion in late 1966, reached after "a general review of attendance requirements as a qualification for office holding" (A. 202), clearly represents the correct interpretation of the Act. That conclusion (which was still the Secretary's view at the time the instant election was conducted) was as follows (A. 202):

"[M]easuring the reasonableness of a meeting attendance requirement solely in terms of the number of members adversely affected by its application in a particular election tended to unduly penalize the legitimate interest of a union in encouraging participation in the affairs of the union as well as obtaining candidates who have demonstrated an interest in, and are likely to be concerned with, the problems of the organization. Upon reexamination, therefore, it was concluded that *it would be less than fair to attack a meeting attendance requirement simply because of the failure of union members to actually attend meetings (thus leading to their disqualification for office) as long as the require-*

ment itself could be reasonably met by all members and was uniformly applied." (Emphasis added.)

This was likewise the holding in *Martin* v. *Lodge 636, Boilermakers,* 245 F. Supp. 375 (W.D. Pa. 1963). The rule required attendance at one meeting in each of the five quarters preceding election. Of 175 members, only 14 qualified. The court found the rule reasonable, noting that attendance was not burdensome, and that to invalidate the rule "would hold in effect that there can be no attendance requirement whatever in this union."

We would add but one other point, unique perhaps to the Steelworkers. If percentages are determinative, defendant International is confronted with an unmanagable administrative burden. There is no way it can feasibly determine, in advance, which of its 3,700 locals may apply the rule and which may not. The adoption of any arbitrary percentage figure will leave International no choice but to abandon the rule altogether, at a sacrifice of the substantial values which it believes inhere in the rule.

(2) *Credit for Working*

Petitioner contends (brief, p. 25) that the union "is not faithful to its own premise" because credit is given to members who work during a meeting. This contention is, to us, quite startling. We are startled because it is the Secretary who has consistently emphasized that unions with meeting attendance requirements must give credit to those who work during the meeting (*supra,* page 11).

Indeed, it is perfectly clear that the Secretary would have taken an even dimmer view of the rule if the union had *not* provided credit to those who worked during meetings (A. 102). In short, the union was being faithful to the *Secretary's* own premise, by providing credit to those who worked during meetings.

The meeting attendance rule is a reasonable rule designed to achieve legitimate purposes. The work credit does not

invalidate the rule, but is a practical adjustment made to assure that every member is able to qualify to run for union office. In the Steelworkers Union, every member *is* able to qualify.

(3) *The 36 Month Period*

While the Secretary's Interpretative Manual approves 50 percent meeting attendance requirements spanning one or two years (A. 203), it is silent as to the validity of a three-year rule. Of course, in this particular case, because the local union was new, the rule spanned less than two years, and this case falls directly under the Manual. Nevertheless, we shall discuss briefly why even a three-year rule is reasonable (as the district court held, A. 46).

The Secretary's representatives argued to International that a three-year rule "would be more apt to make it more difficult for Union members to qualify for Union office" (A. 94). This proposition is hardly self-evident, and it certainly was not proved in this case. Since only 50 percent attendance is required, it is possible that more members might qualify under a three-year rule than under a two-year rule (e.g., if they attended heavily in the first year but only sporadically thereafter). We think it more probable that the length of the period has no significant impact on the number qualifying. That was the view of the Solicitor of Labor, who reasoned that those interested in union affairs would qualify no matter how long the period, while those not interested in union affairs would not qualify no matter how short the period (A. 101). The Solicitor's estimate is corroborated at Local 6799. The number attending half the meetings does not vary substantially when the period is reduced.[23]

---

[23] 36 members attended half the meetings over the preceding 21 months. Had the rule been limited to the preceding 12 months, 43 members would have attended half the meetings. Had the rule been limited to the preceding 6 months, 45 members would have attended half the meetings. (D. Ex I.)

Moreover, one of the principal purposes of the rule—to assure membership attendance at meetings and a check against unbridled control of meetings by the incumbent officers—would be lost if the rule were shortened. The term of office is three years (A. 156). If the attendance period were shortened, there would be no incentive for non-officers to attend at the beginning of a term.

We submit that petitioner has made no showing which would warrant treating three-year rules differently from two-year rules under the Act. Indeed, as we have shown, a three-year rule is *more* reasonable in the Steelworkers, because the term of office is three years. And since the rule was extended from two years to three by rank-and-file delegate action, over the objection of USWA's officers, it can hardly be said that its imposition is undemocratic.

CONCLUSION

For the reasons set forth hereinabove, the decision below should be affirmed.

Respectfully submitted,

BERNARD KLEIMAN
10 South La Salle Street
Chicago, Ill. 60603
MICHAEL H. GOTTESMAN
GEORGE H. COHEN
BREDHOFF, BARR, GOTTESMAN,
COHEN & PEER
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036
CARL FRANKEL
1500 Commonwealth Building
Pittsburgh, Pa. 15222
JEROME SMITH
6404 Wilshire Boulevard
Los Angeles, Calif.
Attorneys for Respondents

APPENDIX

CASES IN WHICH MEETING ATTENDANCE RULES HAVE BEEN HELD UNREASONABLE

There are four decided cases in which particular meeting attendance requirements have been held unreasonable. Three cases involving the Glass Bottle Blowers' 75 percent meeting attendance rule:

Wirtz v. *Local 153, Glass Bottle Blowers Assn.*, 244 F. Supp. 745 (W.D. Pa. 1965), affirmed 405 F. 2d 176 (3rd Cir., 1968).

Wirtz v. *Local 66, Glass Bottle Blowers Assn.*, 268 F. Supp. 33 (W.D. Pa. 1967).

Wirtz v. *Local 262, Glass Bottle Blowers Assn.*, 290 F. Supp. 965 (N.D. Cal., 1968).

The fourth case involved a union rule which required members to have attended one meeting in *each* of the 13 quarters preceding election plus the nominating meeting:

Wirtz v. *Independent Workers Union,* 272 F. Supp. 31 (M.D. Fla., 1967).

We set forth below a summary of each of these cases.

Wirtz v. *Local 153, Glass Bottle Blowers Assn.* The rule required 75 percent meeting attendance, but gave credit for working *if the member notified the union within 72 hours after the meeting that he had been working during the meeting.* Of 500 members, at most 11 were eligible (of these, the status of two was in doubt). There were 10 offices to be fillled. No qualified candidates were nominated for four of the offices and they had to be filled by appointment. The court rejected as "obviously untenable" the notion that meeting attendance requirements are inherently unreasonable, but agreed with the Secretary that the rule before it went "too far", citing the combination of three

factors: (1) 75 percent was too high; (2) the excuse provision was too rigid; and (3) only a "handful" of members qualified. The court summarized its holding: "We conclude that 75 is too high a percentage when combined with the strict rule regarding excuses." The court suggested, as possible guidelines, that the rule should not be so strict that it prevents qualification by at least twice as many members as there are offices, or by 10 percent of the members.

Wirtz v. *Local 66, Glass Bottle Blowers.* The rule was identical to that in the *Local 153* case, and the same judge decided that it was unreasonable, relying upon his decision in the *Local 153* case.

Wirtz v. *Local 262, Glass Bottle Blowers.* The rule required attendance at 75 percent of meetings during *each year* since the last election, and members could receive credit for excused absences (work, illness or accident) only if they brought them to the Union's attention within 72 hours after the meeting. The Union had 568 members, of whom 10 qualified. Eight of these 10 were incumbents who were *paid* to attend the meetings. There were 9 offices to be filled; two candidates ran for President, and the other 8 eligible members ran uncontested for the 8 remaining offices. The court stated that in "holding the 75 percent meeting requirement qualification to be unreasonable" it had considered the following factors: percentage of meeting required; frequency of meetings held; period of time involved; allowances for excused absences; and the effects of the requirement. The court also noted that no other union had a 75 percent meeting attendance requirement. It stated that its holding of unreasonableness was "buttressed" by the requirement that 75 percent be attained in *each* year.

Wirtz v. *Independent Workers Union.* The rule required attendance at one meeting in each quarter of the preceding three calendar years, plus attendance at one meeting during the quarter preceding the election, plus attendance at the nominating meeting. (For certain lesser offices, the rule

required attendance in each quarter during only one preceding calendar year, rather than three, but was in other respects the same). Incumbent officers were paid to attend meetings. Of 1,600 members, 11 met the three-year requirement for higher office, and 13 met the one-year requirement for lesser office. Several persons were nominated for each office. The incumbent officers ruled on eligibility, and declared all of their opponents ineligible except one candidate for Vice-President. With that one exception, the incumbents ran unopposed. The court stated that meeting attendance requirements are not *per se* unreasonable, but it declared the rule unreasonable in the circumstances of the case because:

(1) No announcement was ever made that the attendance register would be used to determine eligibility;

(2) "[T]here is abundant evidence that . . . many members refused, neglected or otherwise failed to sign" the attendance register;

(3) There was no provision for receiving new nominations after it developed that all nominees except incumbents were ineligible to run for 3 of the 4 offices;

(4) Incumbent officers were *paid* to attend meetings, thus the effect of the rule "was plainly suited to cultivate entrenched management of the defendant union and fell well short of a rightful measure of democratic unionism";

(5) The rule was too severe, and disqualified more than 99 percent of the members;

(6) The requirement that members attend in *each* quarter for 3 preceding calendar years meant that a member would have to decide 3½ years in advance of the election that he wanted to be a candidate. "Standing alone this would present a serious question as to reasonableness; when the effect noted above results, the requirement is plainly unreasonable."